Kraemer v. City of Frisco

Court of Appeals of Texas, Twelfth District, Tyler

April 8, 2026, Delivered

NO. 12-25-00273-CV

Reporter
2026 Tex. App. LEXIS 3251 *; 2026 LX 125636

CAMERON KRAEMER, APPELLANT v. CITY OF FRISCO, TEXAS, APPELLEE

Prior History: [*1] Appeal from the 416th Judicial District Court of Collin County, Texas. (Tr.Ct.No. 416-05201-2024).

Counsel: For Kraemer, Cameron, Appellant: Mr. Matthew Bachop.

For City of Frisco, Texas, Appellee: Mr. Kevin M. Curley, Ms. Melissa H. Cranford.

Judges: Panel consisted of Worthen, C.J., Hoyle, J., and Davis, J.

Opinion by: BRIAN HOYLE

Opinion

MEMORANDUM OPINION

Appellant Cameron Kraemer appeals the trial court's dismissal of his employment-related claims against Appellee City of Frisco, Texas.[1] In his sole issue, he challenges the trial court's grant of the City's dispositive motion. We affirm.

BACKGROUNDA

Kraemer was promoted to the position of Assistant Fire Chief of the Frisco Fire Department in 2017, and the following year, became the Assistant Chief of Emergency Services.

On August 15, 2022, Kraemer commenced leave under the Family Medical Leave Act (FMLA) for post-traumatic stress disorder. Kraemer's FMLA leave concluded on November 1, 2022, after which he began an additional 90 days of leave under the City's leave of absence policy. On December 7, Kraemer submitted a workers' compensation claim, which the City's third-party administrator denied, finding that Kraemer's injury or illness was not sustained on the job. On January 31, 2023, Kraemer notified [*2] the City that he was still unable to work and requested unpaid leave through March 31 as an accommodation, which the City approved. The request further stated that Kraemer would return to work on April 3.

On March 31, Kraemer requested additional unpaid leave through April 30, stating at the end of the leave period, he would "be re-evaluated." The City viewed this as a request for indefinite unpaid leave and the City's human resources director, Lauren Safranek, initially informed Kraemer that the City could not grant such a request. In a telephone call with Safranek, Kraemer proposed the idea of a modified duty schedule allowing him to slowly integrate back into full-time work. Safranek testified via deposition that she told Kraemer that any return to work, partial or otherwise, required that Kraemer pass a psychological evaluation. Kraemer testified regarding the conversation:

> Q: ...And in that conversation, Lauren eventually said that the City would agree to give you [an] additional period of leave through April 30th, 2023, correct?
>
> Kraemer: Correct.
>
> Q. And she told you in that conversation that that was the final period of leave that would be extended, correct?
>
> Kraemer: Correct.
>
> Q: And [*3] that you needed to return to work with or without a reasonable accommodation on May 1st or your employment would be terminated?
>
> Kraemer: She told me a hundred percent.

[1] This case was transferred to this Court from the Fifth Court of Appeals in Dallas, Texas, pursuant to a docket equalization order. *See* TEX. GOV'T CODE ANN. § 73.001(a) (West 2025).

> Q: What do you mean "a hundred percent"?
>
> Kraemer: Anything less than a hundred percent return to work would not work.
>
> Q: Can you tell us what the exact words she used to relay that to you were?
>
> Kraemer: I told her I believed I could be going back in partially, and she said that would not work because you need to have a third-party psychological examination.

Following the call, Safranek extended Kraemer's unpaid leave through April 30 to allow him to obtain the required clearance, which Kraemer did not submit. Instead, on April 28, the City received an additional request for reasonable accommodation, in which Kraemer asked for another period of unpaid leave through May 31. This request, like the previous one, stated that he would "be re-evaluated" at the end of the leave period.

On May 1, 2023, the City informed Kraemer via letter that his employment was terminated because of his inability to return to work "with or without reasonable accommodations" following the end of his leave period. The letter stated, in relevant part, [*4] that "the vacancy in the position of Assistant Fire Chief is compromising the operations of the City of Frisco Fire Department and granting continued accommodations of additional leave would cause an undue burden and hardship for the department and the City, placing the safety of the community and the department at risk."

On August 2, 2024, Kraemer filed suit against the City, alleging a claim for breach of contract, as well as multiple theories of disability discrimination and retaliation pursuant to Chapter 21 of the Texas Labor Code.

Thereafter, the City filed a "Defendant's Plea to the Jurisdiction or, in the Alternative, Motion for Summary Judgment," in which it argued first that governmental immunity barred Kraemer's claims, and alternatively that summary judgment was proper on those claims under both traditional and no-evidence grounds. On August 21, 2025, the trial court issued an order granting both the City's plea to the jurisdiction and alternatively, the City's motion for summary judgment. This appeal followed.

GOVERNMENTAL IMMUNITY

In the first portion of his sole issue, Kraemer argues that the legislature waived the City's governmental immunity for his claims, and therefore [*5] the trial court erred in granting the City's plea to the jurisdiction.

Standard of Review

A trial court's ruling on a plea to the jurisdiction is subject to de novo review. ***Suarez v. City of Tex. City***, 465 S.W.3d 623, 632 (Tex. 2015). We liberally construe the pleadings in the plaintiff's favor and take all factual assertions as true. ***Heckman v. Williamson Cty***., 369 S.W.3d 137, 150 (Tex. 2012). When a governmental entity asserts immunity from suit, the plaintiff must affirmatively demonstrate the trial court's jurisdiction by alleging a valid waiver of immunity. ***Ryder Integrated Logistics, Inc. v. Fayette Cty***., 453 S.W.3d 922, 927 (Tex. 2015). In determining whether a plaintiff's claims are barred by immunity, we look to the substance of the claims alleged, because a plaintiff's artful pleading cannot circumvent governmental immunity. ***Univ. of Tex. M.D. Anderson Cancer Ctr. v. McKenzie***, 578 S.W.3d 506, 513 (Tex. 2019).

A plea to the jurisdiction is a dilatory plea intended to defeat an action without regard to the merits of the asserted claims; that is, a plea to the jurisdiction typically challenges whether the plaintiff alleged facts that affirmatively demonstrate the court's jurisdiction to hear the case. ***Bland Indep. Sch. Dist. v. Blue***, 34 S.W.3d 547, 554 (Tex. 2000); ***City of San Antonio v. Vasquez***, 340 S.W.3d 844, 847(Tex. App.—San Antonio 2011, no pet.). However, a plea to the jurisdiction "can also properly challenge the existence of those very jurisdictional facts." ***Mission Consol. Indep. Sch. Dist. v. Garcia***, 372 S.W.3d 629, 635 (Tex. 2012). Therefore, a court deciding a plea to the jurisdiction "may consider evidence and must do so when necessary to resolve the jurisdictional [*6] issues raised[,]" even if such evidence implicates both the trial court's subject matter jurisdiction and the merits of the case. ***Blue***, 34 S.W.3d at 555; *see* ***Garcia***, 372 S.W.3d at 635. In suits against governmental employers, "the prima facie case implicates both the merits of the claim and the court's jurisdiction because of the doctrine of sovereign immunity." ***Garcia***, 372 S.W.3d at 635-36.

Applicable Law

Sovereign and governmental immunity are common-law concepts that generally protect the State and its political

subdivisions from the burdens of litigation. ***Harris Cnty. v. Annab***, 547 S.W.3d 609, 612 (Tex. 2018). "Sovereign immunity protects the state and its various divisions, such as agencies and boards, from suit and liability, whereas governmental immunity provides similar protection to the political subdivisions of the state, such as counties, cities, and school districts." ***Travis Cent. Appraisal Dist. v. Norman***, 342 S.W.3d 54, 57-58 (Tex. 2011) (citing ***Wichita Falls State Hosp. v. Taylor***, 106 S.W.3d 692, 694 n.3 (Tex. 2003)).[2] Governmental immunity from suit defeats a trial court's subject matter jurisdiction. ***City of Dallas v. Turley***, 316 S.W.3d 762, 767 (Tex. App.—Dallas 2010, pet. denied). The plaintiff in any suit has the burden to affirmatively demonstrate the trial court's jurisdiction, and this burden includes establishing a valid waiver of immunity in suits against the government. ***Town of Shady Shores v. Swanson***, 590 S.W.3d 544, 550 (Tex. 2019). Generally, a waiver of governmental immunity requires "clear and unambiguous" statutory language. ***Texas Off. of Comptroller of Pub. Accts. v. Saito***, 372 S.W.3d 311, 313 (Tex. App.—Dallas 2012, pet. denied) (citing TEX. GOV'T CODE ANN. § 311.034 (West 2023)).

Section 271.152 of the Texas Local Government Code provides [*7] that a governmental entity that is authorized by law to contract and that enters into a contract "subject to this subchapter" waives its immunity to suit "for purposes of adjudicating a claim for breach of the contract[.]" TEX. LOC. GOV'T CODE ANN. § 271.152 (West 2023); ***City of Denton v. Rushing***, 570 S.W.3d 708, 709 (Tex. 2019). A "contract subject to this subchapter" is "a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly executed on behalf of the local governmental entity." TEX. LOC. GOV'T CODE ANN. § 271.151(2)(A) (West 2023). The Texas Supreme Court set out five "required elements that must be met" under Section 271.151(2)(A): "(1) the contract must be in writing, (2) state the essential terms of the agreement, (3) provide goods or services, (4) to the local governmental entity, and (5) be executed on behalf of the local governmental entity." ***Rushing***, 570 S.W.3d at 711.

The legislature has also provided a limited waiver of immunity for claims brought against governmental units alleging violations of the Texas Commission on Human Rights Act (TCHRA), as found in Texas Labor Code Chapter 21. TEX. LAB. CODE ANN. § 21.254 (West 2023). The TCHRA waives sovereign immunity from suit for claims of discrimination and retaliation, but the waiver extends only to suits in which "the plaintiff actually alleges a violation of the TCHRA [*8] by pleading facts that state a claim thereunder." ***Garcia***, 372 S.W.3d at 636; *see* ***Prairie View A&M Univ. v. Chatha***, 381 S.W.3d 500, 504 (Tex. 2012). Absent a pleading that sets forth a prima facie case, sovereign immunity is not waived. ***Garcia***, 372 S.W.3d at 637. Because the TCHRA was modeled after federal statutes, Texas courts may look to federal precedent when interpreting its provisions. ***Tex. Health & Human Services v. Sepulveda***, 668 S.W.3d 856, 864 (Tex. App.—El Paso 2023, no pet.); ***Molina v. DSI Renal, Inc.***, 840 F.Supp. 2d 984, 992 (W.D. Tex. 2012) (noting that "[b]ecause the TCHRA was intended "to correlate state law with federal law in the area of discrimination in employment," federal precedent interpreting the Americans with Disabilities Act ("ADA") is authoritative on corresponding provisions of the TCHRA").

Breach of Contract

In his breach of contract claim, Kraemer alleges that the City "violated the City of Frisco Personnel Policies by failing to provide [him] with continuous paid leave, reduced hours, and/or modified duty for up to 12 months as needed for the occupational illness he suffered." Kraemer's argument presupposes that the Personnel Policies constitute the terms of a unilateral contract that he accepted by performing his job duties. The City asserts that the Personnel Policies are not a contract "subject to this subchapter"—and in fact, not a written contract at all—as required by Section 271.151(2)(A), because the policies contain (in a section entitled Application [*9] of Personnel Policies) a disclaimer which states:

> Nothing in the Personnel Policies shall be construed as an employment contract between the City of Frisco and its employees. Further, the Personnel Policies do not in any manner alter the at-will employment status of the City of Frisco's

[2] Courts often use the terms "sovereign immunity" and "governmental immunity" interchangeably even though they are distinct concepts. ***Hyde v. Harrison Cnty.***, 607 S.W.3d 106, 109 n.3 (Tex. App.—Houston [14th Dist.] 2020, pet. denied) (citing ***Wichita Falls State Hosp. v. Taylor***, 106 S.W.3d 692, 694 n.3 (Tex. 2003)). Though the terms differ, the law gives these two immunities the same treatment as to the issues raised in this case. *See* ***id.*** Thus, we cite cases involving sovereign immunity and cases involving governmental immunity without noting the type of immunity involved.

employees.

The presence of a disclaimer in a document can negate the existence of contractual intent. ***Rushing***, 570 S.W.3d at 712. In ***Rushing***, the Supreme Court of Texas determined that the "broad general disclaimer" in a governmental employer's Policies and Procedures Manual, which stated that "[t]he contents of this manual do not in any way constitute the terms of a contract of employment," conclusively negated contractual intent. ***Id.*** Similarly, here, the disclaimer unequivocally states that the Personnel Policies shall not be construed as an employment contract. "We need not look any further to negate contractual intent." ***Id.*** at 711.

Kramer asserts that this case more closely resembles ***City of Houston v. Williams***, wherein the Texas Supreme Court found that a set of city ordinances formed a unilateral contract between the City and firefighters employed thereby. *See* ***City of Houston v. Williams***, 353 S.W.3d 128, 140-41 (Tex. 2011). However, the decision in ***Williams*** depended on the [*10] alleged contract arising from city ordinances rather than a policy manual. The Court found that the disclaimer (which read, "[n]o provision of this ordinance shall be construed to create a vested right of compensation for sick leave benefits or, where applicable, for termination benefits") was limited in scope and did not negate contractual intent entirely. ***Id.***

Kraemer further alleges that the disclaimer was repealed by a later-enacted portion of the Personnel Policies addressing workers' compensation. The ordinance enacting the Workers' Compensation Policy states that "[a]ll provisions of any ordinance in conflict with this Ordinance are hereby repealed." Kraemer appears to argue that because the Workers' Compensation Policy does *not* contain a disclaimer, it conflicts with the general disclaimer at issue herein and the disclaimer was therefore repealed by the subsequent ordinance. However, the language of the disclaimer is clear that it applies to the Personnel Policies in their entirety, and there otherwise appears to be no conflict between the two portions of said Personnel Policies.

Finally, Kraemer argues that the disclaimer is ambiguous (and therefore that a fact issue exists as [*11] to its interpretation) because the reference to "employees" plural implies that the City may have intended to disclaim contractual intent only as to collective bargaining contracts, but not as to a contract with an *individual* employee. To determine the disclaimer's meaning, we must take a holistic approach that considers the entire disclaimer "in an effort to harmonize and give effect to all the provisions" contained within. ***Apache Deepwater, LLC v. McDaniel Partners, Ltd.***, 485 S.W.3d 900, 906 (Tex. 2016). We note that the subsection containing the disclaimer also reads, "These Personnel Policies apply equally to all employees of the City of Frisco, unless a class of employees is specifically exempted in writing by these Personnel Policies, or by written agreement between an employee and the City of Frisco." It follows, therefore, that the Personnel Policies were *not* intended to serve as such a written agreement between an individual employee and the City, and that as an employee of the City, the disclaimer contained within the Personnel Policies applies equally to Kraemer.

For governmental immunity to be waived under Section 271.152 of the Local Government Code, there must first be an enforceable written contract. *See* TEX. LOC. GOV'T CODE ANN. §§ 271.151, 271.152. Here, the City's Personnel Policies do not create an enforceable contract because the [*12] disclaimer therein effectively negates the City's contractual intent. Therefore, Kraemer's breach of contract claim is barred by governmental immunity, and the trial court correctly granted the City's plea to the jurisdiction as to said claim. We overrule this portion of Appellant's sole issue.

TCHRA Claims

Kraemer asserts that the City violated the TCHRA by multiple means, each of which requires a showing of different elements to establish a prima facie case.

Violations of the TCHRA can be established with either direct or circumstantial evidence, and for cases based on circumstantial evidence, Texas courts generally employ the three-part ***McDonnell Douglas*** burden-shifting framework. ***Alamo Heights Indep. Sch. Dist. v. Clark***, 544 S.W.3d 755, 781-82 (Tex. 2018) (citing ***McDonnell Douglas Corp. v. Green***, 411 U.S. 792, 802-05, 93 S. Ct. 1817, 1824-26, 36 L. Ed. 2d 668 (1973)). First, the employee must establish a prima facie case of discrimination, which gives rise to a rebuttable presumption that a statutory violation occurred. ***Id.*** at 782. The employer may then rebut this presumption by offering a legitimate, nondiscriminatory reason for the disputed employment action. ***Id.*** This is a burden of production, not persuasion, and involves no credibility assessment. *See* ***Reeves v. Sanderson Plumbing Products, Inc.***, 530 U.S. 133, 142, 120 S. Ct. 2097,

2106, 147 L. Ed. 2d 105 (2000). "Once rebutted, the presumption disappears, and an employee lacking direct evidence cannot [*13] prove a statutory violation without evidence that the employer's stated reason is false and a pretext for discrimination." ***Alamo Heights***, 544 S.W.3d at 782. Each step of the ***McDonnell Douglas*** analysis is jurisdictional in nature. ***Id.*** at 783.

Disability Discrimination — Termination

To establish a prima facie case of disability discrimination under the TCHRA, a plaintiff must show (1) he has a disability;[3] (2) he is "qualified" for the job; and (3) he suffered an adverse employment decision—here, that his employment was terminated—because of his disability. ***Donaldson v. Tex. Dep't of Aging & Disability Servs.***, 495 S.W.3d 421, 436 (Tex. App.—Houston [1st Dist.] 2016, pet. denied); *see also* TEX. LAB. CODE ANN. § 21.051 (West 2023). A plaintiff can establish that he is "qualified" by showing that "either (1) [he] could perform the essential functions of the job in spite of [his] disability," or "(2) that a reasonable accommodation of [his] disability would have enabled [him] to perform the essential functions of the job." ***Moss v. Harris Cnty. Constable Precinct One***, 851 F.3d 413, 417 (5th Cir. 2017).

Here, Kraemer failed to produce evidence showing that he was qualified for the assistant fire chief position at the time of his termination. The evidence in the record shows that at the time of Kraemer's termination on May 1, 2023, his treating physician, Dr. Heather Tedwell, had not released him to work "at the City of Frisco in any capacity whatsoever." And in his deposition, [*14] Kraemer answered affirmatively when asked whether "from August 15th, 2022, until May 1, 2023, you and your healthcare providers were unable to represent that you could work at the Frisco Fire Department in any capacity[.]" Accordingly, Kraemer was medically incapable of performing his duties as assistant fire chief at the time of his termination and thus was not a qualified individual, unless some reasonable accommodation can be identified that would have enabled him to perform the job. *See* ***Moss***, 851 F.3d at 418.

[3] "'Disability' means, with respect to an individual, a mental or physical impairment that substantially limits at least one major life activity of that individual, a record of such an impairment, or being regarded as having such an impairment." TEX. LAB. CODE ANN. § 21.002(6) (West 2023).

The evidence shows that Kraemer discussed with Safranek whether he might be capable of returning to work on a reduced schedule, but nothing showing that he, or any of his doctors, ever concluded that, despite his disability, he was capable of performing the functions of the assistant fire chief position at all, even on a part-time basis. *See* ***id.*** In April of 2024, Dr. Tedwell testified before an administrative law judge that throughout her treatment relationship with Kraemer, her opinion has "always been that he has not been ready to go back to Frisco Fire Department[,]" an opinion which persisted until the time of her testimony. Consequently, Kraemer did not meet his burden of raising a genuine [*15] issue of material fact about whether allowing him to return to work part-time would be a reasonable accommodation. As to the second possible accommodation that Kraemer suggests, namely an additional period of unpaid leave, we note that the parties dispute whether the request was one for indefinite leave. Although taking leave that is limited in duration may be a reasonable accommodation to enable an employee to perform the essential functions of the job upon return, taking leave without a specified date to return is not a reasonable accommodation. *See* ***Delaval v. PTech Drilling Tubulars, L.L.C.***, 824 F.3d 476, 481 (5th Cir. 2016); *see also* ***Cortez v. Raytheon Co.***, 663 F. Supp. 2d 514, 525 (N.D. Tex. 2009) (noting that where "the best Cortez could offer as to when she would return to work was speculation that she could possibly be back in January 2007... Cortez was asking for an open-ended leave").

Even presuming that Kraemer made a specific request for only an additional four weeks of leave, as he contends in his briefing, nothing in the record suggests that the requested accommodation would have enabled him to perform his job. *See* ***Hester v. Williamson Cnty., Tex.***, No. A-12-CV-190-LY, 2013 WL 4482918, at *8 (W.D. Tex. Aug. 21, 2013) (noting that "[t]he County was only required to provide accommodation that would allow Hester to perform [*16] the essential functions of a mechanic presently, or in the immediate future"); *see also* ***Cortez***, 663 F. Supp. 2d at 525 (stating that "Raytheon was not required to eliminate the requirement that Cortez appear for work in order to accommodate her disability"). As recently as July 10, 2025, Kraemer testified that returning to work at the City was "very plausible in the future," but "I don't know today," and affirmed that none of his medical providers cleared him to work at the City. Therefore, even if the City granted the additional leave for May 2023, there is no evidence to show that Kraemer could have thereafter regained the ability to perform his essential functions as assistant

fire chief.

Moreover, assuming *arguendo* that Kraemer could establish a prima facie case of disability discrimination, the City offered a legitimate, nondiscriminatory reason for the adverse employment action—that Kraemer remained unable to return to work (possibly indefinitely), the resulting continued vacancy in the assistant fire chief position compromised the operations of the fire department, and granting Kraemer additional leave would cause an undue hardship for both the department and the City. *See* ***Owens v. Calhoun Cnty. Sch. Dist.***, 546 Fed. Appx. 445, 448 (5th Cir. 2013). *[*17]* Faced with evidence of a legitimate reason for the employment action, Kraemer needed to present evidence which, when viewed as a whole, would support a finding that the non-discriminatory reason given by the City was false or not credible, and that the "real reason for the employment action was unlawful discrimination." ***Tex. Dep't of Aging & Disability Services v. Lagunas***, 618 S.W.3d 845, 853 (Tex. App.—El Paso 2020, no pet.); *see also* ***Datar v. Nat'l Oilwell Varco, L.P.***, 518 S.W.3d 467, 481 (Tex. App.—Houston [1st Dist.] 2017, pet. denied) (stating that "[t]he employer is entitled to be unreasonable so long as it does not act with discriminatory animus.").

Kraemer focuses on two pieces of evidence to support his argument that the City's reason for his termination was pretextual. First, he notes that Fire Chief Lee Glover stated in his deposition that he could not think of "any Frisco firefighter with any injury or illness whatsoever who was terminated for not returning to work in as short a time as [Kraemer]." We read this assertion as an attempt to demonstrate pretext by showing disparate treatment. *See* ***Vincent v. Coll. of the Mainland***, 703 Fed. Appx. 233, 238 (5th Cir. 2017); *see also* ***Tex. Health & Human Services Comm'n v. Mitchell***, No. 03-22-00665-CV, 2024 WL 4629162, at *13 (Tex. App.— Austin Oct. 31, 2024, pet. denied) (mem. op.) (no showing of pretext where plaintiff "does not identify any other employee who exhausted all available leave, had been absent from their position *[*18]* for nearly a year, and had made no attempts to return to work or indicated any date when they would return to work but remained employed"). However, even if true, this statement does not suggest that the City's given reason for terminating Kraemer was *false*, or that the "real reason" for Kraemer's termination was disability discrimination. *See* ***Hudgens v. Univ. of Tex. MD Anderson Cancer Ctr.***, 615 S.W.3d 634, 644 (Tex. App.—Houston [14th Dist.] 2020, no pet.) ("The issue at the pretext stage is not whether the employer made an erroneous decision; it is whether the decision, even if incorrect, was the real reason for the employment determination."). Second, Kraemer points out Glover's testimony that the City did not post a vacancy for the assistant fire chief position until July of 2023, two months following Kraemer's termination. But Glover also testified immediately thereafter that Kraemer's appeal of his termination was not even resolved until July 19, 2023, and that the posted vacancy was initially intended to fill *his own* assistant fire chief position (following Glover's promotion to fire chief). Again, this portion of the record contains no indication that the true reason for Kraemer's termination was disability-based discrimination. *See* ***Kaplan v. City of Sugar Land***, 525 S.W.3d 297, 308 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (noting that "[s]imply disputing the underlying facts of an employer's decision is not sufficient to create an issue of pretext"). *[*19]*

Whether because Kraemer failed to establish a prima facie case of disability discrimination, or because he failed to present any evidence suggesting pretext, the City's immunity from suit is not waived for this claim, and the trial court correctly granted the City's plea to the jurisdiction thereon. We overrule this portion of Appellant's sole issue.

Disability Discrimination — Failure to Accommodate

"The elements of a 'reasonable accommodation' claim overlap the elements of a disability-discrimination claim to some extent." ***Hagood v. Cnty. of El Paso***, 408 S.W.3d 515, 524 (Tex. App.—El Paso 2013, no pet.); *see also* ***Manning v. Abington Rockland Joint Water Works***, 357 F. Supp. 3d 106, 115 (D. Mass. 2019) (noting that both "a classic disability discrimination claim and a failure to accommodate claim ... require the plaintiff to establish she was disabled and that she had the ability to perform essential functions of the job with or without a reasonable accommodation"). To establish a prima facie "reasonable accommodation" claim, a plaintiff must show (1) he has a disability, (2) an employer covered by the statute had notice of his disability; (3) with reasonable *[*20]* accommodations he could perform the essential functions of his position; and (4) the employer refused to make such accommodations. ***Donaldson***, 495 S.W.3d at 439; *see also* TEX. LAB. CODE ANN. § 21.128 (West 2023). An essential element of any job is the ability to appear for work. ***Rogers v. Int'l Marine Terminals, Inc.***, 87 F.3d 755, 759 (5th Cir. 1996). However, we note that the ***McDonnell Douglas*** burden-shifting framework is not

applicable to a reasonable accommodation claim. *See* ***Donaldson***, 495 S.W.3d at 439.

Kraemer, as the plaintiff, had the burden to identify and request reasonable accommodations. *See* ***LeBlanc v. Lamar State Coll.***, 232 S.W.3d 294, 300 (Tex. App.—Beaumont 2007, no pet.); ***Ortiz-Martinez v. Fresenius Health Partners, PR, LLC***, 853 F.3d 599, 605 (1st Cir. 2017) (holding that plaintiff must "demonstrate in the first instance what specific accommodations she needed and how those accommodations were connected to her ability to work"). As aforementioned, the City and Kraemer dispute whether his request for additional unpaid leave beginning on May 1, 2023, was indefinite in nature. But even assuming that Kraemer's request only encompassed an additional month of leave, there is no evidence that this accommodation would have "presently, or in the near future, enable[d] [Kraemer] to perform the essential functions of his job." ***Punt v. Kelly Services***, 862 F.3d 1040, 1051 (10th Cir. 2017); *see also* ***Moss***, 851 F.3d at 419 (noting that "taking leave that is limited in duration may be a reasonable accommodation to enable an employee to perform the essential functions [*21] of the job *upon return*" (emphasis added)). In fact, as discussed *supra*, the record evidence establishes the opposite—almost one year after his termination, Kraemer's treating physician testified that he still could not return to work for the City as a result of his condition, and more than two years after his termination, Kraemer testified that he was still not cleared to work at the City "in any capacity whatsoever," part-time or otherwise.[4] *See* ***Punt***, 862 F.3d at 1051 (stating that "an employee is required to inform the employer of the "*expected duration of the impairment* (not the duration of the leave request) ... Without an expected duration of an impairment, an employer cannot determine... whether the leave request is a reasonable accommodation.").

Similarly, although Kraemer may have personally supposed he could return to work part-time, his opinion was undermined by his own physician's determination that he could not return to work for the City "in any capacity" at any time prior to his termination or for months thereafter. *See* ***Denson v. Steak 'n Shake, Inc.***, 910 F.3d 368, 371 (8th Cir. 2018) (holding that "an employee's subjective belief that he or she can perform the essential functions of the job is irrelevant"); ***Scruggs v. Pulaski Cnty., Ark***., 817 F.3d 1087, 1094 (8th Cir. 2016) (stating that [*22] "[i]t is not reasonable to expect an employer to disregard an employee's treating physician's opinion expressly imposing ... restrictions"). The ADA, and by extension, the TCHRA, does not find a failure to accommodate where an employer refuses to "permit an employee to perform a job function that the employee's physician has forbidden." ***Id.***, *see also* ***Lincoln v. BNSF Ry. Co.***, 900 F.3d 1166, 1195 n.19 (10th Cir. 2018); ***Pohlen v. Mayorkas***, No. CV 22-2185 (PAM/LIB), 2024 WL 733501, at *3 (D. Minn. Feb. 22, 2024) (applying this rationale to employee with PTSD).

We conclude that the record evidence establishes that the trial court lacked subject matter jurisdiction over Kraemer's claim that the City failed to accommodate his disability. Consequently, the trial court properly granted the City's plea to the jurisdiction as to this claim. We overrule this portion of Appellant's sole issue.

Disability Discrimination — Failure to Engage in Interactive Process

Kraemer also alleges that the City refused to make reasonable accommodations because it refused to engage in an interactive process.[5] Once an employee identifies a disability and its attendant restrictions, "the employer and employee should engage in flexible, interactive discussions to determine the appropriate accommodation." ***Hagood***, 408 S.W.3d at 525; *see also* ***EEOC v. Chevron Phillips Chem. Co., LP***, 570 F.3d 606, 621 (5th Cir. 2009). "When an employer does not engage in a good faith interactive process, that employer violates the ADA—including when the employer discharges the employee instead of considering the requested accommodations." ***Univ. of Tex. at San Antonio v. Wilkerson***, No. 13-24-00021-CV, 2026 WL 202566, at *11 (Tex. App.—Corpus Christi—Edinburg Jan. 26, 2026, no pet. h.) (mem. op.).

[4] "[W]hen an employee seeks to return to work following a medical leave of absence necessitated by the onset of a disability... her employer's duty to reasonably accommodate her ... is triggered at the time the employee provides her employer with a release from her medical health care professional which essentially states that the employee has the ability to perform the essential functions of her job with reasonable accommodation." ***Kitchen v. Summers Continuous Care Ctr., LLC***, 552 F. Supp. 2d 589, 595 (S.D.W. Va. 2008).

[5] We note that "a failure to engage in a good faith interactive process is not a per se violation; the interactive process is but a means to the end of finding reasonable accommodations." ***Harmon v. Tex. S. Univ.***, 672 S.W.3d 684, 694 n.3 (Tex. App.—Houston [14th Dist.] 2023, no pet.) (citing ***Silva v. City of Hidalgo, Tex.***, 575 F. App'x 419, 424 (5th Cir. 2014)).

As aforementioned, Kraemer's FMLA leave and subsequent City-provided leave expired on January 31, 2023. Thereafter, Kraemer received the accommodation of two more months of unpaid leave without opposition from the City. In early April, Kraemer and Safranek discussed two accommodations, namely Kraemer's request for additional unpaid leave and the possibility of Kraemer returning to work part-time or on light duty. Despite the initial denial, Kraemer received the additional month of unpaid leave he requested. However, Safranek noted that for Kraemer to return to work in any capacity, part-time or otherwise, he would need to receive medical clearance through a psychological evaluation. The record does not show any further inquiry or discussion about the psychological evaluation requirement, nor does Kraemer allege he made any such inquiries or attempted to complete the evaluation.

If the employer's unwillingness to engage in good-faith discussions leads to a failure [*24] to reasonably accommodate an employee, then the employer has not complied with its obligations. *See* ***Cutrera v. Bd. of Supervisors of La. State Univ.***, 429 F.3d 108, 112 (5th Cir. 2005). On the other hand, if responsibility for the breakdown of the interactive process is traceable to the employee, no violation occurs. ***Delaval***, 824 F.3d at 481. Here, the record shows that the breakdown in the interactive process is traceable to Kraemer's failure or refusal to respond either to the City's letter or Safranek's statement regarding medical clearance. *See* ***Equal Employment Opportunity Comm'n v. Methodist Hosps. of Dallas***, 62 F.4th 938, 948 (5th Cir. 2023) (noting that employee "caused a subsequent breakdown when she failed to respond to [the employer's] letters offering her additional leave"). Kraemer failed to establish a prima facie TCHRA case for failure to accommodate under the interactive process theory. The trial court correctly granted the City's plea to the jurisdiction as to this claim, and we overrule this portion of Appellant's sole issue.

Retaliation

The TCHRA prohibits an employer from retaliating against an employee who engages in certain protected activities, including one who "(1) opposes a discriminatory practice; (2) makes or files a charge; (3) files a complaint; or [*25] (4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing." TEX. LAB. CODE ANN. § 21.055 (West 2023). To establish a prima facie case of retaliation, an employee must show: (1) he engaged in an activity protected by the TCHRA, (2) he experienced a material adverse employment action, and (3) a causal link exists between the protected activity and the adverse action. ***Alamo Heights***, 544 S.W.3d at 782.

Although the Supreme Court of Texas has not foreclosed the possibility of an accommodation request serving as an opposition to a discriminatory practice, it has made clear that "to invoke the protections of Section 21.055, the conduct relied on by the employee must, at a minimum, alert the employer to the employee's reasonable belief that unlawful discrimination is at issue." ***Tex. Dept. of Transp. v. Lara***, 625 S.W.3d 46, 59 (Tex. 2021).

In this case, Kraemer points to his testimony that in conversation with Safranek, he requested "some form of light duty" that "allows something besides a hundred percent return to work immediately." Kraemer frames this statement as a reference to an illegal "100% healed" policy, which he claims should have alerted the City to his belief that disability discrimination was occurring. Although specific "magic words" are not required to invoke the TCHRA's [*26] anti-retaliation protection, "complaining only of 'harassment,' 'hostile environment,' 'discrimination,' or 'bullying' is not enough." ***Id.*** at 60. Here, as in ***Lara***, there is no evidence in the record that Kraemer alerted the City—either in the conversation itself or in any other communications he had with City personnel—that he was making the modified duty request as a means of opposing a discriminatory practice, or that he otherwise put the City on notice that he believed disability discrimination was "at issue." *See* ***Tex. Dep't of State Health Services v. Resendiz***, 642 S.W.3d 163, 183 (Tex. App.—El Paso 2021, no pet.); ***Alamo Heights***, 544 S.W.3d at 787. Kraemer does not rely on any other evidence raising a fact question on whether his request for modified duty constituted actionable protected activity. Consequently, we conclude that Kraemer did not present any evidence raising a fact issue on whether he engaged in a protected activity as required to establish a prima facie case of retaliation under the TCHRA. Because governmental immunity bars Kraemer's claim for retaliation against the City, the trial court correctly granted the City's plea to the jurisdiction as to this claim. We overrule the remaining portion of Appellant's sole issue.

DISPOSITION

Having overruled Appellant's sole [*27] issue, we ***affirm*** the judgment of the trial court.

BRIAN HOYLE

Justice

Opinion delivered April 8, 2026.

JUDGMENT

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED, and DECREED that the judgment of the court below **be in all things affirmed**, and that all costs of this appeal are hereby adjudged against the appellant, CAMERON KRAEMER, for which execution may issue, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.
